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October 29, 2008

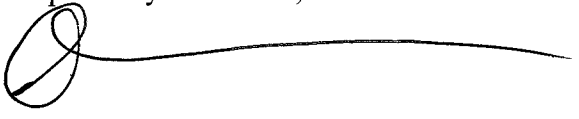
Via ECFS
Ms. Marlene Dortch
Secretary, Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Notice of Permitted Ex Parte Communication, High-cost Universal Service Support (WC Docket No. 05-337); Federal-State Joint Board on Universal Service (CC Docket No. 96-45); Lifeline and Link Up (WC Docket No. 03-109); Universal Service Contribution Methodology (WC Docket No. 06-122); Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities (CG Docket No. 03-123); Implementation of the Local Competition Provisions in the Telecommunications Act of 1996 (CC Docket No. 96-98); Developing a Unified Intercarrier Compensation Regime (CC Docket No. 01-92); Intercarrier Compensation for ISP-Bound Traffic (CC Docket No. 99-68); and IP-Enabled Services (WC Docket No. 04-36)

Dear Ms. Dortch:

The purpose of this letter is to memorialize a permitted *ex parte* communication in the above-referenced dockets. On Monday, October 27, 2008, undersigned counsel, accompanied by Mr. William Roughton (Centennial Communications Corp.), Earl Comstock (private attorney) and Robert Loube (Rolka Loube Salzer Associates), met with Commissioner McDowell and his assistant, Mr. Nicholas Alexander. During the meeting we discussed Centennial Communications Corp.'s concerns about the proposed modifications to the universal service, intercarrier compensation, and interconnection regimes, as detailed in the attached letter. The attached letter was separately filed on October 27 and is attached hereto for reference.

Respectfully submitted,



Christopher W. Savage
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October 29, 2008

Hand Delivered

The Honorable Kevin Martin, Chairman
The Honorable Deborah Taylor Tate, Commissioner
The Honorable Michael Copps, Commissioner
The Honorable Jonathan Adelstein, Commissioner
The Honorable Robert McDowell, Commissioner

Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: ***In the Matter of Developing a Unified Intercarrier Compensation Regime,*** **CC Docket No. 01-92,** ***In the Matter of Petition of AT&T Inc. for Interim Declaratory Ruling and Limited Waivers Regarding Access Charges and the ESP Exemption,*** **CC Docket No. 08-152,** ***In the Matter of IP-Enabled Services,*** **WC Docket No. 04-36,** ***In the Matter of Universal Service Contribution Methodology,*** **WC Docket No. 06-122,** ***In the Matter of Petition for Declaratory Ruling Filed by CTIA,*** **WT Docket No. 05-194,** ***In the Matter of Jurisdictional Separations & Referral to the Federal-State Joint Board,*** **CC Docket No. 80-286**

Commissioners:

This letter is submitted in the above-referenced dockets on behalf of Centennial Communications Corp. (Centennial). Centennial is a regional CMRS provider serving rural and other areas in Indiana, Michigan, and Ohio; in Louisiana, Mississippi, and Texas; and in Puerto Rico and the United States Virgin Islands. Centennial also provides fiber-based landline competitive local service, including broadband service, in Puerto Rico. Centennial is certified as an eligible telecommunications carrier (ETC) in essentially all of its operating areas (other than Ohio and Texas), and receives substantial universal service support, under current rules, both domestically and in Puerto Rico.

The purpose of this letter is to urge the Commission ***not*** to take action on universal service matters at the upcoming Commission meeting on November 4, 2008. There is no reason to hastily revamp the existing universal service system. But even if there were some requirement to

act now, the portions of the universal service item that have been leaked to the public appear to be both extremely harmful to regional wireless providers such as Centennial, and at the same time arbitrary and capricious to the point of being simply irrational. The leaked portions of the item appear to contain both mathematical errors and to reflect a deep misunderstanding of the economic and technical resources actually used by wireless ETCs to provide supported services.

As described more fully below, these and other problems with the item before the Commission – again, based on what has been leaked – create a situation in which universal service support would be denied to wireless ETCs even in areas where wireless provides the ***only*** telephone service and even where – if current subsidies are eliminated – subscribers will again revert to having no service at all. This prospect illustrates the difficulties that would arise from rushing to take action on the item – a rush that seems to be driven by factors having nothing to do with any legal deadline or any actual urgency in the industry calling for action.

At the outset, Centennial incorporates by reference here its comments in WC Docket No. 05-337 and CC Docket No. 96-45, in connection with the Commission's consideration of high-cost support mechanisms.[1] Without belaboring the details, Centennial has demonstrated that a simple tweak to existing rules can eliminate problems relating to growth in the overall universal service fund – to the extent that the Commission's cap on total fund growth has not already done so – while also maintaining equitable treatment between incumbent LEC ETCs and competitive wireless ETCs.[2] Totally revamping the mechanics of universal service support for competing ETCs – which, based on published reports, is what the item before the Commission proposes to do – is like buying a new car when all the old one needs is new tires. Not only is the response totally disproportionate to the problem, the new car will likely have problems of its own, apparent after the fact, that are worse than those that afflict the existing one.

Indeed, as NARUC recently pointed out, in light of the nation's economic downturn, as well as turmoil in the financial markets affecting all firms' access to capital, now is a peculiarly inappropriate time for the Commission to be taking major policy actions that could impair if not eliminate the ability of a large and growing industry sector – wireless – to continue to invest in

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[1] Comments of Centennial Communications Corp., WC Docket No. 05-337, CC Docket No. 96-45 (filed April 17, 2008). A copy of these comments is attached for ease of reference.

[2] The key problem is that current rules overstate the support landline incumbents need in circumstances where the incumbent is losing lines. Under current rules, when an incumbent LEC loses lines it does not lose support. Instead, the costs of the idle lines still count for purposes of universal service support. Not only does this automatically prevent support payments to an area from ever going down, it guarantees that they will go up, as the per-line payments to more successful – typically wireless – competitive ETCs also increase. Correcting this single flaw in the current system would effectively end any basis for concern that the universal service fund is growing too quickly, and would at the same time guarantee appropriate competitive parity among different ETCs.

the infrastructure needed to provide robust and reliable service in rural parts of the country.[3] It will be challenging enough for the industry to maintain rural investment ***with*** current universal service support in place. It is difficult to see how the public interest would be served, given overall conditions of the capital markets, by cutting off a source of investment targeted to rural America.

In this regard, as NARUC also noted, a key problem that Centennial, along with the rest of the industry, faces at this juncture is that it the Commission evidently has before it an extremely complex, detailed and interrelated proposal that has never been exposed in any orderly manner to public review or comment. That fact alone puts any plan to actually adopt the item in severe legal jeopardy.[4] The item under consideration is simply inconsistent with the Administrative Procedure Act's requirement that the Commission's actual proposed actions be placed on public comment before they are adopted. Here, while the public has seen bits and pieces of the Commission's proposals, there has been inadequate opportunity to comment on what is, evidently, an interrelated, integrated plan to significantly re-vamp intercarrier compensation, universal service, and, perhaps, physical interconnection arrangements and classification of Internet Protocol-enabled traffic. In the absence of any objective need for immediate action, a decision to adopt such a far-reaching, integrated proposal without further public vetting would be legally questionable to say the least.

While the public has no clear idea of what is actually before the Commission, the snippets that have leaked out relating to universal service are extremely troubling. We understand that the draft would do the following: (1) immediately eliminate funding for wireless ETCs based on the current "equal support rule;" and (2) require wireless ETCs seeking support to submit cost studies showing their costs of serving a particular area; but at the same time (3) provide no cost methodology that wireless carriers could rely on in calculating their costs; (4) expressly forbid wireless ETCs from including a critical component of their loop costs – what they paid for spectrum rights – in the analysis; (5) require that a wireless ETC's per-customer cost be calculated by dividing the ***ETC's*** costs by the ***landline ILEC's*** lines in service; and (6) apply landline-LEC-based cost thresholds to wireless ETC costs. This would also (7) violate the procedures of Section 214(e)(2).

Assuming these leaked proposals accurately reflect what is before the Commission, it would violate both the Communications Act and the Administrative Procedure Act for the Commission to adopt them.

1. Immediate Elimination of Funding Under the "Equal Support Rule." Since shortly after the passage of the 1996 Act, competitive ETCs – mainly CMRS providers – have received universal service support for each eligible ETC line in the same per-line amount as the

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[3] NARUC *ex parte* letter in the above-referenced dockets, dated October 21, 2008.

[4] *Id.*

incumbent LEC ETC receives. As landline LECs have lost lines and competitive ETCs have gained lines, these support payments have become a significant revenue stream for many competitive ETCs. For example, Centennial presently receives roughly $27 million/year in support for its domestic operations under the high-cost and IAS programs. This is a material level of support and its immediate elimination would negatively affect Centennial's ability to continue to invest in rural parts of the country. The inevitable result is that the rural areas that Centennial serves would see declining levels of wireless service, declining investment and, therefore, declining infrastructure development and job opportunities. News reports suggest that America may be entering the most significant economic downturn since the Great Depression. This cannot be the right time to eliminate a system that directs more than $1 billion in investment to rural parts of America. Not only would it be arbitrary and irrational for the Commission to go from providing this significant level of support to providing ***no*** support, without an appropriate transition period, it would violate the Communications Act for the Commission to do so. Section 254, among other things, requires that universal service be "predictable" and "sufficient." Even if current universal service payments to competitive ETCs are deemed, from some perspective, to be "too high," simply eliminating them with no realistic transition plan would reflect a complete lack of predictability, and would by definition not be "sufficient."

Even if it were somehow consistent with the Administrative Procedure Act for the Commission to adopt such a major revision of the universal service program without further public notice, it would still be legally impermissible to simply cut off existing material levels of support. In this regard, the Commission has a long history of buffering major transitions from one regulatory regime to another by establishing substantial transition mechanisms, so that entities that have adapted their operations and financial planning to an existing system can re-adapt to the new regime. Wireless companies make investment decisions over a multi-year planning horizon that necessarily assumes a reasonable degree of stability in major programs such as universal service. While Centennial seriously questions the need for the kind of major overhaul of universal service that the item before the Commission apparently contemplates, if such an overhaul is in the works, simple fairness – and a simple appreciation of the process by which businesses make capital investment decisions – makes clear that a reasonable transition period must be established for moving from the current system to a radically different one in the future.

2. Requiring Cost Studies From Wireless ETCs. The largely deregulatory approach that the Commission has taken towards the wireless industry is one of the regulatory success stories of the last two decades. Requiring wireless ETCs to demonstrate and detail their costs based on traditional utility-type cost analyses would be a profound and ill-considered step away from this successful path. It is true that the current system has led to increasing per-line amounts of support being provided to competitive ETCs, but as we explained in our earlier-cited comments, this problem does not arise from some failure to apply sufficient regulatory scrutiny to the unregulated wireless carriers – it arises from the illogical treatment of ILEC ETC costs, under which those costs are not adjusted downward when the ILEC loses lines in service. Creating a system in which an otherwise unregulated wireless ETC can only receive USF support by detailing its costs for Commission review makes no sense from the perspective of moving all

segments of the industry towards less, not more, regulation. Moreover, precisely because wireless carriers have been unregulated for more than a decade, such entities do not have any institutional infrastructure in place to actually perform regulatory-type cost studies. On the one hand, performing such studies will directly add to the overhead cost of operating a wireless business – a cost that will ultimately be borne by consumers. On the other hand, with substantial amounts of universal service support hanging in the balance, the only rational course for many wireless carriers will be to incur those costs. A cost study requirement does not merely bring "regulation" to the wireless industry – it brings inefficient and expensive regulation. The Commission should permit or require cost analyses from wireless ETCs only as a last resort.

3. Lack of Rules/Standards for Cost Studies. As far as Centennial can tell based on public leaks, while the item would require competitive ETCs to perform cost studies, it would not provide rules or even detailed guidance as to how such studies can or should be performed. From one perspective this renders the entire notion of performing cost studies a sham. Wireless carriers are not subject to the Commission's Part 32 accounting rules and there is no reason to think that different wireless carriers would, or even should, perform a cost analysis in any particular way. Requiring cost studies without explaining how they should be conducted would be simply arbitrary and capricious action. The arbitrary nature of this requirement is, of course, compounded if (as the leaks suggest) a wireless ETC would be deprived of support until an "acceptable" cost study were to be produced. In this regard, the Commission faced an analogous problem in the early 1990s when Congress directed the Commission to regulate cable television rates. In that case, cable operators who chose to justify their rates based on their costs (rather than accept significant and immediate rate decreases) were not immediately given guidance on how to calculate those costs – guidance that was eventually forthcoming as FCC Form 1235 was developed and refined. But – critical here – cable operators were not penalized by having their rates lowered while the rules governing cost analysis of cable service were being sorted out. The same logic should apply here. If the Commission does decide, now or in the future, to make a wireless ETC's entitlement to support dependent on completing an appropriate cost analysis, support should not be removed during the potentially lengthy period that it will take to decide what the rules and methodologies applicable to such a cost analysis will be. Otherwise – as with an arbitrary or immediate cut-off of support under the equal support rule – the action would not be consistent with Section 254's requirement that support be both "predictable" and "sufficient." As we noted earlier, now that the Commission has capped the growth of the universal service fund, there is no urgent need to deal with these issues – and certainly no need to do so by an arbitrary November 4, 2008 deadline.

4. Exclusion of Spectrum Costs. The rumors circulating regarding the item before the Commission seem clear that in determining the costs that wireless ETCs incur in providing supported services, the costs that the wireless ETC incurred in obtaining spectrum rights would be excluded. If this rumor is correct, it represents completely irrational action. This would be like asking General Motors to detail the cost of building a car, but directing it not to count the money it spends on steel, or asking American Airlines to detail the costs of operating an airplane, but directing it to ignore the cost of jet fuel. It makes no more sense to assess a wireless ETC's

costs without considering spectrum costs than it would make to assess a landline LEC ETC's costs without considering the costs of its copper loop plant. Just as a landline LEC ETC cannot provide supported services without copper loops, a wireless ETC cannot provide supported service without spectrum. It is inconceivable that this proposal – if it indeed is in the item before the Commission at all – could survive any objective review under the "arbitrary and capricious" standard.

5. Calculating Competitive ETC Per-Line Costs Using Landline ILEC ETC Lines in Service. One of the most peculiar suggestions to have leaked out regarding the item under consideration is that a wireless ETC's per-line costs of serving a particular ILEC study area would be determined by summing up the wireless ETC's costs, then dividing those costs not by the number of customers the wireless ETC has in the area, but, instead, by the number of lines in service the ***landline ILEC ETC*** has. Centennial finds it hard to believe that this is actually under consideration. A landline LEC ETC's per-line cost is determined by dividing the landline LEC's costs by ***its*** number of lines in service. A wireless ETC's per-line cost is determined by dividing ***the wireless ETC's*** costs by ***its*** number of handsets. Again, Centennial can only assume that this statement is not an accurate reflection of what is actually under consideration by the Commission. If what ***is*** before the Commission truly contains this error, then it would be totally irrational for the Commission to adopt it.[5]

6. Applying Landline LEC ETC Cost Thresholds to Competitive ETC Costs. As Centennial understands it – and putting aside the policy and legal difficulties with calling on wireless ETCs to perform cost studies at all – the item under consideration would deny wireless ETCs support under the high-cost and IAS programs unless its costs are as high as a landline ETC's costs must be. At a high level this is clearly unsound as a matter of economic and competitive policy. If subsidies are to be made available to one supplier in the market (the landline ILEC ETC), then equivalent subsidy amounts must be available to other suppliers. Otherwise, all the government is doing with the subsidy program is giving a competitive advantage to the subsidized provider. Arbitrarily requiring providers with different cost structures to meet the "same" cost standard to receive a subsidy is comparing apples to oranges, and will automatically have the effect of competitively disadvantaging the more efficient supplier.

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[5] Again, this concept is so irrational that Centennial suspects that the leaked description must be wrong. That said, we understand that one aspect of the item before the Commission contemplates wireless and other carriers, in some circumstances, participating in a reverse auction to obtain the right to be the sole recipient of USF funding for a particular area. A potential bidder in such an auction would logically seek to estimate the costs it would incur to serve the entire area under auction and divide that cost by the total number of subscribers in the area, to determine the support level that would constitute its bid in the reverse auction. So perhaps the leaked proposal actually arises in that context. But it is hard to imagine any other context in which it could possibly be rational to divide one carrier's costs by another carrier's line count.

In order to assess the potential impact of this rule, Centennial has made an effort to estimate its per-subscriber loop costs for Louisiana 4 (CMA 457 – Caldwell). We chose this area because it includes, among other communities, Shaw and Blackhawk, Louisiana. These two communities had no telephone service at all – that is, no landline telephone service ***and*** no wireless telephone service – until after Centennial was certified as an ETC for those areas by the Louisiana Public Service Commission as of January 2004. (Service was actually initiated in these communities in March 2005.) Centennial did not serve those areas prior to receiving certification because the population was so low that it made no economic sense to do so; the USF support Centennial began receiving after designation as an ETC made the service possible.

As a high-level check on the reasonableness of the cost thresholds apparently contained in the item under consideration, Centennial attempted to estimate whether the costs it incurs in serving this extremely rural area would meet those thresholds. Based on Centennial's preliminary analysis, even including an allocation of Centennial's spectrum costs, Centennial's costs of serving this area are substantially ***below*** the landline LEC cost threshold for both the IAS and high cost programs. In other words, if the landline LEC cost thresholds are used to determine wireless ETC support, Centennial will receive no support for this area – and presumably others as well – in which the only reason it provides service today ***at all*** – and the only reason that residents have ***any*** form of telephone service – is the universal service support made available to Centennial under the current mechanism. If that support were to be eliminated, Centennial would have no rational choice but to abandon service to these areas. This simply highlights the absurdity of assuming, without an adequate period of public comment and receipt of evidence, that cost analyses developed for use by legacy landline ILEC ETCs can reasonably be used as universal service cost standards for wireless ETCs.[6]

7. *Removing Support for Existing ETCs Without a Transition Period That Allows Them to Comply with Section 214(e)(4) Violates the Communications Act.* If the leaked reports of the item before the Commission are true, and Centennial's costs do not meet the landline cost threshold to receive USF support, Centennial could not continue to serve the rural areas where it presently receives support. Section 214(e)(4) requires that an ETC seeking to relinquish its designation – as Centennial would be forced to do if the rumored order came to pass – must provide advance notice to the applicable State commission and may not discontinue service until the State commission has made arrangements to ensure that the affected customers will be served by another ETC. Leaving aside the fact that in Shaw and Blackhawk, Louisiana, there ***is*** no other ETC (indeed, no provider), and that in many other cases the only other ETC is a landline provider which cannot offer customers the wireless service that Centennial provides, Section

[6] Shaw and Blackhawk present an additional problem for the type of analysis evidently contemplated in the draft item before the Commission: as we understand it, wireless ETC cost calculations are to be based on the landline ILEC ETC study area within which the wireless ETC's service area lies. Shaw and Blackhawk, however, are not served by any landline carrier at all, and, therefore, do not lie within any landline carriers' study area.

214(e)(4) would put an ETC that loses support in an impossible position. It seems incomprehensible to Centennial that the Commission would even consider, much less adopt, an order that plainly conflicts with the statute and the clear intent of Congress when it added sections 214(e) and 254 to the Communications Act in 1996. Either the public has been leaked an incorrect version or what the Commission is considering is confiscatory and contrary to law.

In sum, there is no reason for the Commission to adopt ***any*** significant modifications to the existing USF system by an entirely arbitrary November 4, 2008 deadline, and Centennial urges the Commission not to do so. That said, any action that the Commission does choose to take cannot properly include any of the points noted above – which, again, based on leaks, are now under consideration – because those proposals would violate the Communications Act, the Administrative Procedure Act, or both.

Respectfully submitted,

/s/ Christopher W. Savage

Christopher W. Savage
Counsel for Centennial Communications Corp.

cc: Marlene Dortch